

DOL Issues Final Rule Increasing Salary Thresholds for Overtime Exemptions

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On April 23, the U.S. Department of Labor (“DOL”) released its long-awaited final rule (the “Final Rule”) increasing the salary level for certain overtime exemptions under the Fair Labor Standards Act (“FLSA”). We previously [wrote](#) about the DOL’s proposed new rule increasing salary thresholds (“Proposed Rule”) [here](#). If the Final Rule survives expected legal challenges, it will substantially raise the minimum salary employees must receive to qualify for the administrative, executive and/or professional exemptions (commonly referred to as the “white-collar” exemptions) as well as the “highly compensated employee” exemption under the FLSA.

Increases to Minimum Salary Thresholds

The Final Rule provides two increases to the minimum salary threshold for the white-collar exemptions by January 1, 2025:

- On July 1, 2024, the salary threshold will increase from \$684 per week (\$35,568 annually) to \$844 per week (\$43,888 annually).
- On January 1, 2025, the salary threshold will increase to \$1,128 per week (\$58,656 annually), which is higher than the threshold in the Proposed Rule.

The Final Rule likewise provides two increases to the minimum compensation threshold for the highly compensated employee exemption by January 1, 2025:

- On July 1, 2024, the minimum amount will increase from \$107,432 to \$132,964 annually.
- On January 1, 2025, the minimum amount will increase to \$151,164 annually.

Although it increases the minimum salary thresholds, the Final Rule does not otherwise change the salary basis or duties tests applicable to the white-collar or highly compensated exemptions.

In a departure from the Proposed Rule, the Final Rule also will not apply the new salary thresholds to employees in Guam, Puerto Rico, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands. The salary thresholds in those territories will remain at current levels.

Automatic Updates to Minimum Salary Thresholds

The Final Rule also includes automatic updates to the minimum salary thresholds beginning July 1, 2027, and every three years thereafter. The salary level for the white-collar exemptions will be adjusted to remain at the 35th percentile of weekly earnings in the lowest-wage Census Region (currently the South). The compensation level for the highly compensated exemption will be adjusted to remain at the 85th percentile of weekly earnings nationally. Any automatic increase will happen outside the standard rulemaking process. However, the Final Rules allows the DOL to pause future automatic increases due to certain economic conditions.

Legal Challenges Likely

Anticipated legal challenges to the Final Rule and other lawsuits that broadly challenge the DOL's rulemaking authority may delay the July 1, 2024 effective date. The Final Rule is expected to face legal and congressional challenges similar to those faced by the Obama administration's 2016 salary threshold rule, which was struck down by a Texas court. There have also been legislative efforts to prevent the DOL from implementing a salary threshold rule. In February, for example, a U.S. congressman filed a bill that aims to "prohibit the Secretary of Labor from finalizing, implementing, or enforcing a proposed rule with respect to the salary threshold for overtime eligibility." This bill is not likely to become law before the Final Rule's current effective date, but it is representative of the nature of some of the opposition facing the Final Rule's implementation.

In addition to anticipated legal challenges to the Final Rule, there is already litigation challenging DOL regulations requiring that employees be paid a minimum salary amount to qualify as exempt from overtime. The DOL is currently defending its rulemaking authority in connection with the current overtime salary threshold levels, which went into effect under the Trump administration in 2020. In *Mayfield v. U.S. Department of Labor*, a federal district court held that the DOL has the authority to enact a salary level test to determine if an employee falls within an exempt category under the FLSA. That district court decision is now pending appeal in the U.S. Court of Appeals for the Fifth Circuit. The U.S. Supreme Court is also set to issue decisions in *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. U.S. Department of Commerce*, which could potentially diminish the DOL's rulemaking authority. These and other expected legal challenges come on the heels of Justice Kavanaugh's dissent in *Helix Energy Sols. Group, Inc. v. Hewitt*, where he questioned whether the FLSA authorized the DOL to impose salary basis and salary level requirements.

Takeaway

The DOL estimates that nearly 4 million employees will become non-exempt employees eligible for overtime once the salary limits are fully implemented in January 2025.

Despite expected legal challenges, employers should begin reviewing their exempt workforce to identify and evaluate those employees whose compensation is at or near the new thresholds, and prepare to increase their salaries to meet the minimum salary thresholds or reclassify the positions as non-exempt. In deciding whether a salary increase or reclassification makes sense for their businesses, employers should consider not only the economic impact but also the impact that changes may have on employee morale. For any employees who will be reclassified, employers should notify the affected employees and explain the changes. Employers may also need to update their time-reporting policies and train reclassified employees on overtime and timekeeping policies.

For questions, contact a member of [Haynes Boone's Labor and Employment Practice Group](#).